

In the Matter of

Federal-State Joint Board on Universal Service

TelxMedia INC

Petition for Limited Designation as an Eligible
Telecommunications Carrier in the States of
Alabama, Connecticut, Delaware, New
Hampshire, North Carolina New York,
Tennessee, the Commonwealth of Virginia,
Florida, Texas, Maine and the District of
Columbia

CC Docket No. 09-197

Before the
Federal Communications Commission
Washington, DC 20554

**PETITION FOR LIMITED DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER IN THE STATES OF ALABAMA,
CONNECTICUT, DELAWARE, NEW HAMPSHIRE, NORTH CAROLINA, NEW
YORK, TENNESSEE, THE COMMONWEALTH OF VIRGINIA, FLORIDA AND THE
DISTRICT OF COLUMBIA**

I. INTRODUCTION

TelxMedia, INC(" TelxMedia"), pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended ("Act"), and Section 54.201 of the rules of the Federal Communications Commission ("FCC" or "Commission"), hereby requests limited designation as an eligible telecommunications carrier ("ETC") in the States of Alabama, Connecticut, Delaware, New

Hampshire, North Carolina, New York, Tennessee, the Commonwealth of Virginia, Florida, Texas, Maine and the District of Columbia (collectively the "Non-Jurisdictional States"), TelxMedia seeks ETC designation in the Non-Jurisdictional States only for purposes of participation in the Universal Service Fund's ("USF") Low-Income programs and does *not* seek to participate in the High-Cost program.

Since the Alabama Public Service Commission, the Connecticut Department of Public Utility Control, the Delaware Public Service Commission, the District of Columbia Public Service Commission, the New Hampshire Public Utilities Commission, the North Carolina Utilities Commission, the New York Public Service Commission, the Tennessee Regulatory Authority, the Florida Public Service Commission, the Public Service Commission of the District of Columbia, the Texas Public Utilities Commission, the Maine Public Utilities Commission and the Virginia State Corporation Commission (collectively, the "State Commissions") lack jurisdiction to consider TelxMedia's request for designation as an ETC, the Commission, under Section 214(e)(6) of the Act, has the necessary jurisdictional authority to consider and grant this request.¹ As more fully described below, TelxMedia satisfies the requirements for designation as an ETC in the Non-Jurisdictional States and will offer all of the services and functionalities supported by the universal service program throughout its designated service areas in the Non-Jurisdictional States. Grant of TelxMedia's request, therefore, will promote the public interest by providing customers in the Non-Jurisdictional States with lower prices and higher quality wireless services through innovative distribution channels.

¹See 47 U.S.C. §214 (e) (6).

II. BACKGROUND

A. TelxMedia Overview

TelxMedia will provide prepaid wireless telecommunications services to consumers by using the T-Mobile network on a wholesale basis to offer nationwide service. T-Mobile is a nationwide carrier that provides wholesale capacity on its wireless network to wireless resellers like TelxMedia. Pursuant to an existing agreement, TelxMedia will obtain from T-Mobile the network infrastructure and wireless transmission facilities to allow TelxMedia to operate as a Mobile Virtual Network Operator ("MVNO"), in the same fashion as TracFone and Virgin Mobile, who have both been granted ETC status by the Commission.² TelxMedia will purchase wireless services from T-Mobile on a wholesale basis under its MVNO agreement, for calling and text messaging. TelxMedia will package those services into unique service plans and pricing, and bundle the wireless service with an approved and compliant TelxMedia handset selections, mobile applications, ETC certification materials, marketing materials, web interface, and customer service to produce finished wireless service offerings to sell to end-user customers.

TelxMedia will offer one simple unlimited calling plan that includes unlimited talk and text with data packages available to customers. Customers will apply their Lifeline discount to this plan and will be responsible for the balance. In addition to voice services, prepaid Lifeline customers also will have access to features at no additional charge, including voice mail, caller

² *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc., Petitions for Designation in the States of Alabama, Connecticut, Delaware, Florida, North Carolina, New Hampshire, New York, North Carolina, Pennsylvania, Tennessee, Virginia, and Washington D.C.*, CC Docket No. 96-45, Order, 23 FCC Red 6206 (2008) (*TracFone ETC Order*"); *Petition of Virgin Mobile USA, L.P. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 24 FCC Red 3381 (2009) (*Virgin Mobile Order*). The Commission had previously granted TracFone forbearance from the facilities requirement for ETC designation, permitting TracFone to offer the supported services via resale only. *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e) (1) (A) and 47 C.F.R. § 54.201 (i)*, CC Docket No. 96-45, Order, 20 FCC Red 15095 (2005) (*TracFone Forbearance Order*). The *Virgin Mobile Order* contained both the forbearance analysis and ETC designation.

I.D. and call waiting services. TelxMedia expects that as the marketplace changes that it will have to modify minute and pricing plans, but will remain committed to offering its customers the most competitive and reliable service available.

B. Lifeline Program

Universal service has been a fundamental component of U.S. telecommunications policy since adoption of the Act over 70 years ago. Section 254 of the Act describes the Commission's commitment to the concept of universal service, particularly for low-income consumers. Section 254(b) sets forth the principles upon which the Commission shall base its policies for the promotion and advancement of universal service. These principles require the Commission to ensure that all consumers, including low-income consumers, have access to telecommunications services at affordable and reasonably comparable rates.³ The Low-Income program was designed to assist low-income individuals obtain quality telecommunications services through the Lifeline and Link-Up programs. Lifeline support helps defray the monthly costs of telecommunications services for lower-income consumers by providing them with discounts off the monthly cost of telephone service, with additional discounts available for individuals living on tribal lands.⁴

III. THE COMMISSION HAS AUTHORITY TO PERFORM THE ETC DESIGNATION

Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific universal service support." The Act reserves the authority to designate entities as ETCs to state public utility commissions ("PUCs"). Pursuant to Section 214(e) (6), however, the Commission may designate as an ETC "a

³See 47 U.S.C. § 254. Section 254(b)(3) of the Act requires the Commission to determine whether "consumers in all regions of the Nation, *including low-income consumers* and those in rural, insular, and high cost areas...have access to telecommunications [services] ..." 47 U.S.C. § 254(b)(3) (emphasis added).

⁴47 C.F.R. §§ 54.400 and 54.401.

common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a state commission."⁵ The Commission has established that a carrier must demonstrate that it "is not subject to the jurisdiction of a state commission" before it may consider an application for ETC designation.⁶ The Commission also has stated that any carrier seeking ETC designation from it must provide the Commission with an "affirmative statement" from the state PUC that it lacks jurisdiction to perform the ETC designation."⁷

IV. TELXMEDIA REQUESTS ETC DESIGNATION IN THE NON-JURISDICTIONAL STATES FOR PARTICIPATION IN THE LIFELINE PROGRAM

A. TelxMedia Requests ETC Designation in its Existing Service Area

TelxMedia requests ETC designation for its entire service area in Alabama, Connecticut, Delaware, District of Columbia, New Hampshire, North Carolina, New York, Tennessee, Florida, Texas, Maine and Virginia (TelxMedia service area is defined as the area served by the facilities-based carrier from whom it obtains wholesale service: T-Mobile). TelxMedia understands that its service area overlaps with several rural carriers' service areas but maintains that the public interest factors described below justify its designation in these service areas, especially since it only seeks ETC designation for purposes of participation in the Lifeline program,

⁵ See 47 U.S.C. § 214(e) (6).

⁶ See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Red 22947, 22948 (1997).

⁷ See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Red 12208, 12264 If 113 (2000).

B. TelxMedia's Limited ETC Designation Request to Participate in the Lifeline Program

TelxMedia requests ETC designation in the Non-Jurisdictional States for the sole purpose of participating in the Lifeline program, TelxMedia does not seek eligibility to receive support from the High Cost support program. The instant request to participate in the Lifeline program is consistent with the Commission's requirements for ETC designation, and would promote the goals of universal service by offering the many benefits of supported services to low-income customers in the Non-Jurisdictional States. As discussed above, TelxMedia's Lifeline offerings will include many features specifically designed for qualifying low-income customers, who currently lack appealing and affordable options for wireless services, many of whom are therefore unable to subscribe to wireless services.

C. The Limited Designation Request is Consistent with Recent Precedent

TelxMedia' request for designation to participate in the Lifeline program is consistent with the Commission's recent decisions conditionally designating TracFone Wireless and Virgin Mobile as ETCs in several states.⁸ As noted in the *TracFone* and *Virgin Mobile Orders* that designation of prepaid wireless providers as ETCs will provide a variety of benefits to low-income consumers, including increased consumer choice, high-quality service offerings and mobile access to emergency services on wireless devices.

TelxMedia requests that the Commission move expeditiously to process its pending ETC applications so that it can begin providing qualifying lower-income customers with affordable USF-supported wireless services. Designation of prepaid wireless providers such as TelxMedia as ETCs is a significant step towards ensuring that all low-income customers share in the many benefits associated with access to affordable wireless telecommunications services.

⁸ See *TracFone ETC Order*, 23 FCC Red at 6212-13 % 15; *Virgin Mobile Order*, 24 FCC Red at 3395 % 38.

Designation of ETC status to prepaid wireless carriers like TelxMedia should help to close the widening gap for wireless services and provide low-income customers with the significant advantages associated with access to wireless services.

V. TELXMEDIA SATISFIES THE REQUIREMENTS FOR DESIGNATION AS AN ETC

Section 214(e)(1) of the Act and Section 54.201(d) of the Commission's rules provide that applicants for ETC designation must be common carriers and that they will offer all of the services supported by universal service, either using their own facilities or a combination of their own facilities and the resale of another carrier's services. Applicants also must commit to advertise the availability and rates of such services.⁹The following details how TelxMedia satisfies each of these requirements.

A. TelxMedia is a Common Carrier

CMRS resellers like TelxMedia are treated as common carriers for regulatory purposes.¹⁰

B. TelxMedia Will Provide Supported Services Through Resale of MVNO

As described above, TelxMedia purchases wireless network services on a wholesale basis from T-Mobile via an MVNO agreement.

C. TelxMedia Offers All of the Required Services and Functionalities

Through its wholesale arrangements with T-Mobile, TelxMedia is able to provide all of the services and functionalities supported by the universal service program under Section 54.101 of the Commission's rules in the Non-Jurisdictional States. TelxMedia will provide these

⁹See 47 U.S.C. § 214(e) (1) and 47 C.F.R. § 54.201(d) (2).

¹⁰*Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Red 1411, 1425 \ 37, 1454-55 \ 102 (1994) (wireless resellers are included in the statutory "mobile services" category, and providers of cellular service are common carriers and CMRS providers); 47 U.S.C. § 332(c)(1)(A) ("mobile services" providers are common carriers);

services and functionalities to qualifying Alabama, Connecticut, Delaware, District of Columbia, New Hampshire, North Carolina, New York, Tennessee Florida, Texas, Maine and Virginia customers.

1. Voice Grade Access to the Public Switched Telephone Network

TelxMedia provides voice grade access to the public switched telephone network ("PSTN") through the purchase of wholesale CMRS services from T-Mobile. Bandwidth for this voice-grade access is at minimum between 300 and 3,000 MHz as required by the Commission's rules.¹¹

2. Local Usage

As part of the voice grade access to the PSTN, an ETC must provide local calling services to its customers. The FCC has determined that a carrier satisfies the local usage requirements when it offers customers rate plans containing varying amounts of local usage, TelxMedia offers a variety of rate plans that provide its customers with local usage capabilities in the form of monthly plans, unlimited plans or pay-per-use plans both in prepaid and postpaid scenarios.

3. Access to Emergency Services

TelxMedia provides nationwide access to 911 and E911 emergency services for all of its customers. TelxMedia also complies with the Commission's regulations governing the deployment and availability of enhanced 911 compatible handsets.

D. Advertising of Supported Services

TelxMedia will advertise the availability and rates for the services described above using media of general distribution as required by Section 54.201(d)(2) of the Commission's

¹¹See 47 U.S.C. § 54.101(a) (1).

regulations.¹² The Company will advertise its services in a manner designed to reach those likely to qualify for Lifeline services. TelxMedia will utilize media that will include but will not be limited to, advertisements via newspapers, direct mail, event representation, radio, and the internet, as well as marketing and signage within its retail distribution network. These advertising campaigns will be specifically targeted to reach low-income customers and promoting the availability of cost-effective wireless services to this neglected consumer segment.

VI. DESIGNATION OF TELXMEDIA AS AN ETC WOULD PROMOTE THE PUBLIC INTEREST

A. Goals of the Communications Act

One of the principal goals of the Act, is "to secure lower prices and higher quality services for consumers and encourage the rapid deployment of new telecommunications technologies" to all citizens, regardless of geographic location or income.¹³ Designation of TelxMedia as an ETC in the Non-Jurisdictional States will promote the public interest by providing low-income consumers in the Non-Jurisdictional States with more affordable and higher quality wireless services. Designating TelxMedia as an ETC in the Non-Jurisdictional States will enable it to expand the availability of affordable telecommunications services to qualifying consumers, leading to lower prices and increased choice.

The instant request for limited ETC designation of TelxMedia must be weighed in reference to the Act's goal of providing low-income consumers with access to telecommunications services. The primary purpose of universal service is to ensure that consumers, particularly low-income consumers, receive affordable and comparable

¹²See 47 C.F.R. § 54.201.

¹³*Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56.

telecommunications services. With this in mind, designating TelxMedia as an ETC would significantly benefit low-income consumers eligible for Lifeline services in the Non-Jurisdictional States, who are the intended beneficiaries of universal service. TelxMedia's Lifeline customers will receive the same high-quality wireless services and exceptional customer service provided to all of TelxMedia's customers.

Most importantly, TelxMedia's Lifeline service will provide low-income residents with the convenience and security offered by wireless services. ETC designation in the Non-Jurisdictional States would enable TelxMedia to offer appealing and affordable service offerings to low-income customers to ensure that they are able to afford wireless services on a consistent and uninterrupted basis. Prepaid wireless services have become essential for lower-income customers, providing them with value for their money, access to emergency services on wireless devices, and a reliable means of contact for prospective employers, social service agencies or dependents. Providing TelxMedia with the authority necessary to offer discounted Lifeline services to those most in need of critical wireless service definitely promotes the public interest.

ETC designation in the Non-Jurisdictional States would enable TelxMedia to provide all of the public benefits cited by the Commission in its analysis in the *TracFone* and *Virgin Mobile Orders*. Namely TelxMedia would provide "increased consumer choice, high-quality service offerings, and mobility,"¹⁴ as well as the safety and security of effective 911 and E911 services.¹⁵

A. The Benefits of Competitive Choice

The benefits to consumers of being able to choose from among a variety of telecommunications service providers have been acknowledged by the FCC for more than three

¹⁴ See *Virgin Mobile Order*, 24 FCC Rcd at 3395 ¶38; *TracFone ETC Order*, 23 FCC Rcd at 6212 ¶15.

¹⁵ See *Virgin Mobile Order*, 24 FCC Rcd at 3391 ¶23.

decades.¹⁶ Designation of TelxMedia as an ETC will promote competition and innovation, and spur other carriers to target low-income consumers with service offerings tailored to their needs and to improve their existing networks to remain competitive, resulting in improved services to consumers. Designation of TelxMedia as an ETC will help assure that quality services are available at "just, reasonable, and affordable rates" as envisioned in the Act.¹⁷ Designation of TelxMedia as an ETC would offer Lifeline-eligible consumers an additional choice of providers for accessing telecommunications services, representing a significant step towards ensuring that all low-income consumers share in the many benefits associated with access to wireless services.

B. Impact on the Universal Service Fund

TelxMedia's request for designation as an ETC solely for Lifeline purposes would not unduly burden the USF or otherwise reduce the amount of funding available to other ETCs. The secondary role of Lifeline support with respect to overall USF expenditures is well documented. Limited designation of TelxMedia as an ETC in the Non-Jurisdictional States raises no concerns and any incremental increases in Lifeline expenditures are far outweighed by the significant public interest benefits of expanding the availability of affordable wireless services to low-income consumers.

VIII. CONCLUSION

As discussed above, designation of TelxMedia as an ETC in the Non-Jurisdictional States accords with the requirements of Section 214(e) (6) of the Act and is in the public interest.

For all of the foregoing reasons, TelxMedia respectfully requests that the Commission designate TelxMedia as an ETC in the Non-Jurisdictional States.

¹⁶ See, e.g., *Specialized Common Carrier Services*, 29 FCC Rcd 870 (1971).

¹⁷ See 47 U.S.C. §254(b) (1).